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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 LAWANDA MOSES, Individually and
12 as the Personal Representative of Tommy
13 Yancy Jr., deceased,

14 Plaintiff,

15 vs.

16 STATE OF CALIFORNIA;
17 CALIFORNIA HIGHWAY PATROL; ;
18 CITY OF IMPERIALPOLICE
19 DEPARTMENT; CITY OF
20 IMPERIAL; ; GILBERT CALDERA;
21 HERACLIO CARDENAS; ROBERT
22 GONZALES; WESLEY BOERNER;;
23 RICHARD KOTZIN; MARIO LUNA; ;
and DOES 8 through 25, inclusive;

24 Defendants.
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Case No. 3:15 CV 0334 JM (JLB)

PLAINTIFF LAWANDA MOSES'
SECOND AMENDED COMPLAINT
FOR DAMAGES FOR:

1. VIOLATION OF SUBSTANTIVE
DUE PROCESS, (42 U.S.C. § 1983);
2. VIOLATION OF CIVIL RIGHTS,
(42 U.S.C. § 1983);
3. WRONGFUL DEATH, (42 U.S.C. §
1983);
4. SURVIVAL ACTION, (42 U.S.C. §
1983);
5. VIOLATION OF BANE ACT -
CAL. CIV. CODE § 52.1;
6. ASSAULT;
7. NEGLIGENCE (WRONGFUL
DEATH);
8. FALSE IMPRISONMENT;
9. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
10. NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;
11. DAMAGES

DEMAND FOR JURY TRIAL

TO THE DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff LAWANDA MOSES, Individually and as the Personal Representative of Tommy Yancy Jr., deceased, hereby alleges and complains against the Defendants STATE OF CALIFORNIA; CALIFORNIA HIGHWAY PATROL; CITY OF IMPERIAL; CITY OF IMPERIAL POLICE DEPARTMENT; GILBERT CALDERA; HERACLIO CARDENAS; ROBERT GONZALES; WESLEY BOERNER;; RICHARD KOTZIN; MARIO LUNA; and DOES 8 through 25, inclusive, and each of them hereinafter, (all together, "Defendants") as follows:

I.

JURISDICTION AND VENUE

1. This civil action is brought for the redress of alleged deprivations of constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and 1367.

2. Venue is properly within this District under 28 U.S.C. §1391(b) because all of the events and transactions giving rise to this action took place in Imperial County, California.

II.

NATURE OF THE ACTION

3. This wrongful death and civil rights action seeks compensatory and punitive damages from the State of California; California Highway Patrol; City of Imperial; City of Imperial Police Department; GILBERT CALDERA; HERACLIO CARDENAS; ROBERT GONZALES; WESLEY BOERNER; RICHARD KOTZIN; MARIO LUNA; and DOES 8 through 25 for violation of

1 various rights under the United States Constitution and state law in connection
2 with the police killing of 32-year-old veteran Tommy Yancy Junior, on Mother's
3 Day, May 11, 2014.

4 4. The killing of Tommy Yancy Junior was seen and recorded by
5 multiple witnesses, and afterwards was featured prominently on national and
6 international news. Video footage broadcast by KECY-TV FOX 9 and ABC 5
7 depicts Tommy Yancy Junior, who is clearly unarmed, being attacked by a K-9
8 dog, beaten, forced onto the ground, and shot with one or more tasers amidst a
9 swarm of police officers. Sadly, Tommy's mother Lawanda Moses, who had a
10 very close relationship with her son, witnessed the fatal attack of her son on
11 television, and had to contend with his death on Mother's Day.

12 5. Plaintiff Lawanda Moses commences this action individually and on
13 behalf of her son, decedent Tommy Yancy, Jr. Tommy was driving through or
14 near the intersection of Highway 86 and 15th Street in Imperial, California, when
15 he was pulled over by officers from the California Highway Patrol ("CHP") in
16 what appeared to be a routine traffic stop. During the stop, the CHP Officers and
17 the Police Officers physically attacked Mr. Yancy with a K-9 dog, batons, one or
18 more tasers, and their fists, resulting in his death. This case is in the public interest.

19 III.

20 PARTIES

21 6. At all relevant times, Tommy Yancy, Jr. ("Decedent") was an
22 individual residing in the County of Imperial, State of California.

23 7. Plaintiff, Lawanda Moses, sues both in her individual capacity as the
24 parent of Decedent and in a representative capacity as Personal Representative of
25 Decedent's, her son's, Estate.

26 8. At all times mentioned in this Complaint, Plaintiff Lawanda Moses
27 has been residing in the County of Imperial, State of California.

28 9. Defendant State of California is, and at all times herein mentioned

1 was, a sovereign state of the United States of America.

2 10. Defendant California Highway Patrol (“CHP”) is, and at all times
3 herein mentioned was, an agency of and operating under the authority of the State
4 of California, duly organized and existing under the laws of the State of California.

5 11. Defendant City of Imperial is a City operating pursuant to its Charter.
6 It is a local government entity and is not an arm of the State of California for
7 Eleventh Amendment purposes. .

8 12. Defendant City of Imperial Police Department is, and at all times
9 herein mentioned was, an agency of and operating under the authority of the City
10 of Imperial, duly organized and existing under the laws of the State of California.

11 13. Defendants GILBERT CALDERA, HERACLIO CARDENAS,
12 ROBERT GONZALES, and WESLEY BOERNER are, and at all times herein
13 mentioned were, California Highway Patrol Officers involved in the incident
14 alleged herein. Plaintiff is informed and believes and based hereon alleges that
15 Officer CALDERA pulled the Decedent over in his vehicle and Officers
16 CARDENAS, GONZALES and BOERNER then responded to the scene of the
17 incident. These defendants may collectively be referred to as “the CHP Officers.”

18 14. Defendants RICHARD KOTZIN and MARIO LUNA are, and at all
19 times herein mentioned were, City of Imperial Police Officers involved in the
20 incident alleged herein. Plaintiff is informed and believes and based hereon
21 alleges that the Officers listed herein responded to the scene of the incident.
22 These defendants may be collectively referred to as “the Police Officers.”

23 15. The CHP Officers and the Police Officers named herein may be
24 collectively referred to as “the Officer Defendants.”

25 16. At all relevant times, each of Defendants and Does 8-25, inclusive,
26 was a police officer and/ or a managerial, supervisory, and policymaking
27 employee of the State of California, California Highway Patrol, , who was acting
28 under color of law within the course and scope of his duties as a managerial,

1 supervisorial, and policymaking employee for the State of California, California
2 Highway Patrol, City of Imperial, or City of Imperial Police Department and with
3 the complete authority and ratification of his or her principal, State of California,
4 California Highway Patrol, City of Imperial and/or City of Imperial Police
5 Department. Defendants Does 8-25 caused Decedent's and Plaintiffs' injuries by
6 attacking and killing the Decedent, by integrally participating or failing to
7 intervene in the attack, and by engaging in other acts and/ or omissions around the
8 time of the attack that resulted in Decedent's death.

9 17. In doing the acts and failing and omitting to act as hereinafter
10 described, Does 8-25 were acting on the implied and actual permission and
11 consent of the State of California, California Highway Patrol, City of Imperial
12 and/or City of Imperial Police Department.

13 18. At all times mentioned herein, each and every Defendant was the
14 agent of each and every other Defendant and had the legal duty to oversee and
15 supervise the hiring, conduct and employment of each and every Defendant.

16 19. The true names and capacities of defendants sued herein as Does 8-
17 25, inclusive, are unknown to Plaintiff and therefore sue these defendants by such
18 fictitious names. Plaintiff will amend this complaint to allege their true names and
19 capacities when ascertained. Each of the fictitiously-named defendants is
20 responsible in some manner for the conduct and liabilities alleged herein.

21 20. On information and belief, at all relevant times, Does 8-25 were
22 residents of the State of California.

23 21. The Officer Defendants are directly liable for Decedent's and
24 Plaintiffs' injuries under state law and federal law pursuant to 42 U.S.C. § 1983
25 and are sued in their individual capacities for damages only.

26 22. On June 19, 2014, Plaintiff filed comprehensive and timely claims
27 for damages with the State of California and the California Highway Patrol
28 pursuant to applicable sections of the California Government Code.

1 23. The State of California and the California Highway Patrol denied
2 Plaintiffs' claims on August 21, 2014.

3 24. On September 9, 2014, Plaintiff filed comprehensive and timely
4 claims for damages with the City of Imperial and the City of Imperial Police
5 department pursuant to applicable sections of the California Government Code.

6 25. The City of Imperial and the City of Imperial Police Department
7 denied Plaintiffs' claims on September 17, 2014.

8 **IV.**

9 **FACTS**

10 26. The foregoing allegations are incorporated as is re-alleged herein.

11 27. At all relevant times, the Officer Defendants were acting under color
12 of law and as employees of either the State of California, California Highway
13 Patrol, or the City of Imperial.

14 28. On Sunday, May 11, 2014, at approximately 1-1:30pm, near the
15 intersection of Highway 86 and 15th Street in Imperial, California, Defendant
16 Officer Caldera pulled over decedent Tommy Yancy Jr. in what appeared to be a
17 routine traffic stop.

18 29. Shortly afterwards, two officers approached Yancy's vehicle on the
19 driver's side. Plaintiff is informed and believes and based thereon alleges that one
20 officer was CHP Officer Caldera and the other was one of the Police Officers who
21 responded to the scene. Soon afterwards, Yancy and Officer Caldera and/or the
22 Police Officers began shouting at each other. One officer was wearing a blue
23 uniform, and the other was wearing a tan uniform. Plaintiff is informed and
24 believes and based thereon alleges that the officer in blue was one of the named
25 Defendant Police Officers and the officer in tan was one of the named CHP
26 Officers. The officer in tan had a baton in his right hand. The officer in blue
27 walked towards one of the patrol cars and brought out a K9 dog and walked back
28 to Yancy's vehicle with the dog with his hand on the dog's collar. The K9 dog

1 appeared ready to attack.

2 30. Sometime during this encounter, the remainder of the CHP Officer
3 defendants and the Police Officer defendants arrived at the location and assisted
4 the two officers already engaged in the volatile situation with the Decedent.

5 31. The officer with the K9 dog stood almost directly in front of Yancy's
6 vehicle approximately 10 feet away. The other officer (in tan) was positioned
7 toward the driver's side back door approximately 10 feet away and was still
8 holding the baton.

9 32. Shortly afterwards, Mr. Yancy stepped out of his car with his hands
10 up and stood next to his car facing the officers. He appeared upset and seemed to
11 be yelling something to the officers.

12 33. At this point one of the officers yelled, "You're under arrest" and one
13 or both of the officers repeated the phrase "get on the ground" about 3 times.

14 34. The (blue uniformed) officer with the K9 dog inched forward, with
15 his hand on the dog's collar, as if to threaten Mr. Yancy with the K9 dog. The
16 officer(s) continued to yell at Mr. Yancy to get on the ground.

17 35. Mr. Yancy did not get on the ground immediately, but appeared to be
18 talking or shouting back to the officers with phrases such as "for what?"

19 36. The (blue uniformed) officer released the K9 dog's leash and the dog
20 launched itself toward Mr. Yancy. The dog jumped on or towards Mr. Yancy's
21 face and torso. Mr. Yancy was standing next to his car so he had nowhere to go.
22 Mr. Yancy put his hands up to protect himself and started yelling, "ah, ah, ah" in
23 pain.

24 37. Seconds later, the officers (at this point at least four officers were
25 present) quickly came towards the dog and Mr. Yancy. The officers began striking,
26 hitting, and kicking Mr. Yancy. Soon after, the officers had Mr. Yancy on the
27 ground, face down, and were putting, or attempting to put, Mr. Yancy in
28 handcuffs. The dog was still attacking/biting Mr. Yancy. Mr. Yancy was still

1 yelling in pain and the K9 dog was moving around from Mr. Yancy's back to his
2 front.

3 38. While Mr. Yancy was on the ground he did not appear to be resisting
4 but rather was trying to stop the dog from biting him. Mr. Yancy was squirming
5 around but was not swinging or kicking at the officers.

6 39. Throughout this time, one of the officers was commanding the K9
7 dog and encouraging the dog with phrases like "good boy". Then, the officer in
8 blue appeared to have one knee on Mr. Yancy while trying to get the K9 off of Mr.
9 Yancy.

10 40. At this time, Mr. Yancy was yelling out to the officers, "you got me
11 mother fucker", and was repeating the phrases "I have PTSD, I have PTS fuckin D,
12 I have PTSD".

13 41. One officer then fired a taser shot at Mr. Yancy and Mr. Yancy yelled
14 as if he was in pain again. The officer in blue and the K9 dog either jumped off or
15 fell away from Mr. Yancy as if they had been thrown off him.

16 42. The officers continued to shout at Mr. Yancy and/or each other, and
17 the K9 dog continued to bark. A few seconds later the K9 dog had been placed in
18 one of the patrol cars.

19 43. While Mr. Yancy was still face down on the ground and being struck
20 by the officers, the officers turned Mr. Yancy around and saw that Mr. Yancy had
21 lost consciousness. The officers began performing cardio-pulmonary resuscitation
22 (CPR) on Mr. Yancy, and continued to do so for several minutes until it became
23 clear that Mr. Yancy was not responding to the resuscitation attempts.

24 44. An ambulance was called onto the scene. When the ambulance
25 arrived, the officers once again tried to perform CPR on Mr. Yancy before his
26 body was loaded into the ambulance.

27 45. Despite the fact that the Decedent was clearly unarmed, was
28 outnumbered by the officers, and was not posing any true threat to the officers, the

1 Officer Defendants inexplicably attacked him.

2 46. The Decedent was attacked by a K-9 dog, repeatedly struck and
3 repeatedly shot with a taser, suffered a fractured sternum and died.

4 47. At all relevant times, the Decedent was unarmed and in mental health
5 distress. The Decedent was a veteran suffering from Post-Traumatic Stress
6 Disorder (“PTSD”).

7 48. At all relevant times, the Decedent did not have a weapon or anything
8 that looked like a weapon. The attack of Decedent was captured and broadcast on
9 television.

10 **V.**

11 **FIRST CAUSE OF ACTION**

12 **Violation of Substantive Due Process (42 U.S.C. § 1983)**

13 **(By PLAINTIFF against the Officer Defendants)**

14 49. The foregoing allegations are incorporated as if re-alleged herein.

15 50. Plaintiff has cognizable interests under the Due Process Clause of the
16 Fourteenth Amendment of the United States Constitution to be free from state
17 actions that deprive her of life, liberty, or property in such a manner as to shock
18 the conscience, including but not limited to, unwarranted state interference in their
19 familial relationship with their son, Decedent.

20 51. Decedent had a cognizable interest under the Due Process Clause of
21 the Fourteenth Amendment of the United States Constitution to be free from state
22 actions that deprive him of his right to life, liberty, or property in such a manner as
23 to shock the conscience.

24 52. The aforementioned actions of the Officer Defendants, along with
25 other undiscovered conduct, shock the conscience, in that they acted with
26 deliberate indifference to the constitutional rights of Decedent and Plaintiff, and
27 with purpose to harm unrelated to any legitimate law enforcement objective.

28 53. Specifically, the following conduct of the Officer Defendants shocks

1 the conscience:

- 2 (a) shooting a taser at an unarmed person;
- 3 (b) shooting a taser at a non-dangerous person;
- 4 (c) shooting a taser at a veteran;
- 5 (d) shooting a taser at that person when that person did not pose a
- 6 threat;
- 7 (e) shooting a taser at that person a large number of times;
- 8 (f) utilizing excessive force by beating on the Decedent's chest so as
- 9 to fracture his sternum;
- 10 (g) continuing to shoot a taser at that person while he is on the
- 11 ground;
- 12 (h) beating that person;
- 13 (i) releasing a K9 onto that person so as to cause the K9 to launch at
- 14 that person's face and torso;
- 15 (j) integrally participating in or failing to intervene in the above
- 16 misconduct; and
- 17 (k) all of the above acts together.

18 54. The Officer Defendants acted under color of state law.

19 55. The Officer Defendants violated the substantive due process rights of
20 Plaintiff to be free from unwarranted interference with her familial relationship
21 with Decedent.

22 56. The conduct of the Officer Defendants was a cause of Decedent's
23 death.

24 57. As a direct and proximate cause of the acts of the Officer Defendants,
25 Plaintiff was deprived of the life-long love, companionship, comfort, support,
26 society, care, and sustenance of Decedent, their loved one and family member,
27 and they will continue to be so deprived for the remainder of their natural lives.

28 58. As a direct and proximate cause of the acts of the Officer Defendants,

1 Decedent experienced severe pain and suffering and loss of enjoyment of life.

2 59. The conduct of the Officer Defendants was willful, wanton,
3 malicious, and done with reckless disregard for the rights and safety of Decedent
4 and Plaintiff and therefore warrants the imposition of exemplary and punitive
5 damages as to each of the Officer Defendants.

6 60. Plaintiff brings this claim individually and as the personal
7 representative of Decedent, and seeks wrongful death and survival damages for
8 the violation of Decedent's rights.

9 61. Plaintiff also seeks attorney fees under this claim. Plaintiff also
10 claims funeral and burial expenses and a loss of financial support.

11 **VI.**

12 **SECOND CAUSE OF ACTION**

13 **Violation of Civil Rights (42 U.S.C. § 1983)**

14 **(By PLAINTIFF against the Officer Defendants)**

15 62. Plaintiff incorporates by reference herein all allegations set forth
16 above.

17 63. Plaintiff brings this claim individually and as the personal
18 representative of Decedent, and seeks both survival and wrongful death damages
19 for the violation of Decedent's rights.

20 64. The Officer Defendants' physical assault and battery of Decedent by
21 intentional grabbing, choking and throwing Decedent to the ground was done with
22 the intent to injure plaintiff. Defendants knew that Decedent was unarmed, and
23 was not a threat to anyone including the officers themselves. Defendants used
24 physical force against plaintiff without legal justification or excuse.

25 65. When the Officer Defendants launched a K-9 dog on, beat, shot with
26 a taser, and killed Decedent, they deprived the Decedent of his right to be secure
27 in his person against unreasonable searches and seizures as guaranteed to
28 Decedent under the Fourth Amendment to the United States Constitution and

1 applied to state actors by the Fourteenth Amendment.

2 66. The attack and shooting of Decedent was excessive and unreasonable,
3 especially because the Decedent was unarmed and did not appear to be resisting
4 while on the ground, the Decedent was vastly outnumbered by the Officer
5 Defendants, and the Decedent did not pose an imminent threat of death or serious
6 bodily injury to the Officer Defendants or to anyone else.

7 67. As a result of the unwarranted conduct and unnecessary excessive
8 force of the Officer Defendants, Decedent suffered a fractured sternum and died.

9 68. The Officer Defendants' use of a K-9 dog and a taser against the
10 Decedent violated their training requirements.

11 69. The conduct of the Officer Defendants was willful, wanton,
12 malicious, and done with reckless disregard for the rights and safety of Decedent
13 and therefore warrants the imposition of exemplary and punitive damages as to
14 each of them.

15 70. Each of the Officer Defendants integrally participated in, or failed to
16 intervene in, the conduct described above.

17 71. Defendants, acting under color of law, deprived Decedent and
18 Plaintiff of rights, privileges and immunities secured to them by the Fourth
19 Amendment of the United States Constitution in subjecting Decedent to excessive
20 and unreasonable force. Said wrongful, illegal, and unconstitutional conduct by
21 Defendants is a proximate cause of the losses and damages sustained by Plaintiff,
22 as hereinafter alleged, in that they knowingly and willfully used physical force
23 against a driver who had not committed any crime, was unarmed, and not a danger
24 to anyone, without provocation, necessity, or justification.

25 72. By reason of the wrongful and malicious acts of defendants, and each
26 of them, Plaintiff has suffered extreme and severe mental anguish and physical
27 pain, the extent of which is currently unknown. Plaintiff will amend her
28 Complaint to set forth the true nature and extent of her injuries when the same

1 have been ascertained.

2 73. The intentional and reckless acts of Defendants in physically abusing
3 the Decedent were willful, malicious, oppressive, and in conscious disregard of
4 his constitutional rights, thereby justifying the imposition of punitive or
5 exemplary damages against defendant and in favor of Plaintiff.

6 74. By reason of the aforementioned acts and omissions of Defendants
7 and each of them, Plaintiff was required to and did retain an attorney to institute
8 and prosecute the within action, and to render legal assistance to Plaintiff that she
9 might vindicate the loss and impairment of her aforementioned rights; and by
10 reason thereof, Plaintiff requests reimbursement by Defendants of a reasonable
11 sum for attorney's fees and costs pursuant to 42 U. S.C. § 1988.

12 75. Plaintiff seeks damages for Decedent's pain and suffering and loss of
13 enjoyment of life.

14 76. Plaintiff seeks attorney fees under this claim. Plaintiff also seeks
15 funeral and burial expenses and loss of financial support.

16 **VII.**

17 **THIRD CAUSE OF ACTION**

18 **Wrongful Death (42 U.S.C. § 1983)**

19 **(By PLAINTIFF against the Officer Defendants)**

20 77. Plaintiff incorporates by reference herein all allegations set forth
21 above, and by this reference incorporates the same herein and makes each a part
22 hereof as though fully set forth.

23 78. Plaintiff, Lawanda Moses, has the right to bring the following
24 Wrongful Death Action on behalf of her son, the Deceased, under California Code
25 of Civil Procedure Section 377.60(b).

26 79. Plaintiff, as the parent of the Deceased, suffered and continues to
27 suffer economic and non-economic damages due to Defendants' conduct towards
28 her son, including but not limited to economic damages for funeral expenses and

1 financial losses due to the financial benefits she may have reasonably expected to
 2 receive from her son had he lived, and non-economic damages for grief, loss of
 3 her son's companionship, impairment in the quality of her life, inconvenience,
 4 pain and suffering, and extreme emotional distress.

5 80. Defendants' conduct was attended by circumstances of malice, or
 6 willful and wanton conduct, which Defendants must have realized was dangerous,
 7 or that was done heedlessly and recklessly, without regard to the consequences to
 8 the Deceased and Plaintiff.

9 81. Defendants consciously disregarded a substantial and unjustifiable
 10 risk that they knew or should have known would cause the death of another.

11 82. Plaintiff further demands payment for funeral services and burial
 12 expenses.

13 **VIII.**

14 **FOURTH CAUSE OF ACTION**

15 **Survival Action (42 U.S.C. § 1983)**

16 **(By PLAINTIFF against the Officer Defendants)**

17 83. Plaintiff incorporates by reference herein all allegations set forth
 18 above, and by this reference incorporates the same herein and makes each a part
 19 hereof as though fully set forth.

20 84. Plaintiff brings this claim individually and as the personal
 21 representative of Decedent.

22 85. As set forth above, the Defendants used excessive force while
 23 attempting to arrest Tommy Yancy, Jr.

24 86. The Defendants' use of excessive force, as set forth above, was the
 25 direct and proximate cause of Tommy Yancy, Jr.'s injuries prior to death and
 26 death.

27 87. As a result of the deliberate indifference, reckless indifference and/or
 28 negligence of Defendants as more fully described above, Plaintiff has suffered and

continues to suffer injuries and damages as set forth in the Damages section of this complaint, including, but not limited to, economic damages and medical bills.

88. The Defendants, who used excessive force against Tommy Yancy, Jr., leading to his death, were acting within the course and scope of their employment with their respective public entity employers at the time they engaged in the above-referenced misconduct.

89. Those damages, as allowed by California Code of Civil Procedure §377.30 and 377.34, include, but are not limited to, the Decedent's pain and suffering, emotional distress, and economic harm and losses, as set forth in the "Damages" section below and the Prayer for Relief.

90. Wherefore, Plaintiff seeks judgment against these Defendants as set forth in the Prayer for Relief.

IX.

FIFTH CAUSE OF ACTION

Violation of the *Bane* Civil Rights Act

(By PLAINTIFF against All Officer Defendants)

91. Plaintiff incorporates by reference herein all allegations set forth above, and by this reference incorporates the same herein and makes each a part hereof as though fully set forth.

92. Plaintiff brings this claim as the personal representative of Decedent, and seeks survival damages for the violation of Decedent's rights.

93. Plaintiff seeks damages for Decedent's pain and suffering and loss of enjoyment of life.

94. On or about the above stated dates, Defendants and each of them violated Decedent's civil rights, guaranteed by the United States Constitution, federal law, the California Constitution and the laws of the State of California thereby violating California Civil Code Sections 52, 52.1(a) and 52.1(b).

95. Officer Defendants intentionally interfered with the Decedent's civil

rights by committing intentional and repeated violent acts upon him, including but not limited to:

- (a) shooting a taser at an unarmed person;
- (b) shooting a taser at a non-dangerous person;
- (c) shooting a taser at a veteran;
- (d) shooting a taser at that person when that person did not pose a threat;
- (e) shooting a taser at that person a large number of times;
- (f) utilizing excessive force by beating on the Decedent's chest so as to fracture his sternum;
- (g) continuing to shoot a taser at that person while he is on the ground;
- (h) beating that person;
- (i) releasing a K9 onto that person so as to cause the K9 to launch at that person's face and torso;
- (j) integrally participating in or failing to intervene in the above misconduct; and
- (k) all of the above acts together.

96. As a direct and proximate result of the aforementioned acts of the Officer Defendants, Plaintiff suffered damages in a sum according to proof, and is entitled to the damages, statutory damages, treble damages, attorney's fees and costs provided for by Civil Code sections 52 and 52.1.

X.

SIXTH CAUSE OF ACTION

Assault

(By PLAINTIFF against the Officer Defendants)

97. Plaintiff incorporates by reference herein all allegations set forth above, and by this reference incorporates the same herein and makes each a part

1 hereof as though fully set forth.

2 98. Plaintiff, Lawanda Moses, has the right to bring the following
3 Assault Action on behalf of her son, the Deceased, under California Code of Civil
4 Procedure Section 377.60(b).

5 99. On or about May 11, 2014, at approximately 1-1:30pm, near the
6 intersection of Highway 86 and 15th Avenue in Imperial, California, the Officer
7 Defendants, intentionally, willfully, and wantonly and maliciously threatened to
8 launch a K9 at the Deceased in such a manner so as to cause the Deceased to
9 reasonably believe he was about to be struck in a harmful and offensive manner.
10 Due to the Officer Defendants' subsequent acts of violence towards Deceased,
11 including, but not limited to, actually striking, hitting, and kicking the Deceased, a
12 reasonable person in the Deceased's situation would have been offended by the
13 threatened, violent touching.

14 100. The Officer Defendants thus intended to cause and did cause the
15 Deceased to suffer apprehension of an immediate harmful contact.

16 101. As a direct and proximate result of the aforementioned acts of the
17 Officer Defendants, Plaintiff suffered damages in a sum according to proof, and is
18 entitled to the damages, statutory damages, treble damages, attorney's fees and
19 costs.

20 **XI.**

21 **SEVENTH CAUSE OF ACTION**

22 **Negligence (Cal. Govt. Code § 820 and California Common Law)**

23 **Wrongful Death**

24 **(By PLAINTIFF against All Defendants)**

25 102. Plaintiff incorporates by reference herein all allegations set forth
26 above, and by this reference incorporates the same herein and makes each a part
27 hereof as though fully set forth.

28 103. The actions and inactions of the Officer Defendants were negligent

1 and reckless, including but not limited to:

2 (a) the failure to properly and adequately assess the need to detain,
3 arrest, and use force or deadly force against Decedent;

4 (b) the negligent tactics and handling of the situation with Decedent,
5 including pre-shooting negligence;

6 (c) the negligent detention, arrest, and use of force, including deadly
7 force, against Decedent;

8 (d) the failure to ensure that adequate numbers of employees with
9 appropriate education and training were available to meet the
10 needs of and protect the rights of Decedent;

11 104. As a direct and proximate result of Defendants' conduct as alleged
12 above, and other undiscovered negligent conduct, Decedent lost his life. Also, as a
13 direct and proximate result of Officer Defendants' conduct as alleged above,
14 Plaintiff has been deprived of the life-long love, companionship, comfort, support,
15 society, care and sustenance of Decedent, and will continue to be so deprived for
16 the remainder of her natural life. Plaintiff also claims funeral and burial expenses
17 and a loss of financial support.

18 105. The City of Imperial and State of California are vicariously liable for
19 the wrongful acts of the Officer Defendants pursuant to Section 815.2(a) of the
20 California Government Code, which provides that a public entity is liable for the
21 injuries caused by its employees within the scope of the employment if the
22 employee's act would subject him or her to liability.

23 106. Plaintiff brings this claim individually and as personal representative
24 of Decedent, and seeks both wrongful death damages for the violation of
25 Decedent's rights.

26 ///

27 ///

28 ///

XII.

EIGHTH CAUSE OF ACTION

False Imprisonment

(By PLAINTIFF against All Defendants)

107. Plaintiff incorporates by reference herein all allegations set forth above, and by this reference incorporates the same herein and makes each a part hereof as though fully set forth.

108. The Officer Defendants violated the Deceased's personal liberty by acting in a manner which had the effect of confining him against his will and limiting his contact with anyone from the outside world. The Officer Defendants accomplished this restraint through arresting him unlawfully while also launching a K9 at the Deceased and striking, hitting, kicking, and firing a taser shot at him. The Deceased's false imprisonment ended on or about May 11, 2014, when he lost consciousness due to the Officer Defendants' conduct and was taken to a hospital by ambulance.

109. Specifically, the following conduct of the Officer Defendants constituted a false arrest:

- (a) Pulling Decedent over without cause;
- (b) Surrounding Decedent and preventing him from leaving the scene, effectively leaving him in custody;
- (c) Preventing Decedent from leaving the scene without a warrant;
- (d) shooting a taser at a non-dangerous person;
- (e) shooting a taser at a veteran;
- (f) shooting a taser at that person when that person did not pose a threat;
- (g) shooting a taser at that person a large number of times;
- (h) continuing to shoot a taser at that person while he is on the ground;

1 (i) beating that person;

2 (j) releasing a K9 onto that person so as to cause the K9 to launch at
3 that person's face and torso;

4 (k) integrally participating in or failing to intervene in the above
5 misconduct; and

6 (l) all of the above acts together.

7 110. The Officer Defendants acted under color of state law.

8 111. The conduct of the Officer Defendants prevented Decedent from
9 leaving the scene or otherwise being entitled to the freedom to leave.

10 112. As a direct and proximate cause of the acts of the Officer Defendants,
11 Plaintiff was deprived of the life-long love, companionship, comfort, support,
12 society, care, and sustenance of Decedent, their loved one and family member,
13 and they will continue to be so deprived for the remainder of their natural lives.

14 113. As a proximate result of said conduct, Plaintiff has suffered and
15 continues to suffer extreme mental distress, humiliation and anguish, and other
16 emotional injuries, as well as economic losses, all to her damage in amounts to be
17 proven at trial.

18 114. The Officer Defendants committed the acts alleged herein
19 maliciously, fraudulently and oppressively, with the wrongful intention of injuring
20 the Deceased from an improper and evil motive, amounting to malice, and in
21 conscious disregard of the Deceased's rights.

22 115. The conduct of the Officer Defendants was willful, wanton,
23 malicious, and done with reckless disregard for the rights and safety of Decedent
24 and Plaintiff and therefore warrants the imposition of exemplary and punitive
25 damages as to each of the Officer Defendants.

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XIII.

NINTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(By PLAINTIFF against All Defendants)

116. Plaintiff incorporates by reference herein all allegations set forth above, and by this reference incorporates the same herein and makes each a part hereof as though fully set forth.

117. Defendants, and each of them, engaged in outrageous conduct towards the Deceased, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. To the extent that said outrageous conduct was perpetrated by certain Defendants, the remaining

Defendants adopted and ratified said conduct with a wanton and reckless disregard of the deleterious consequences to Plaintiff. As a proximate result of said conduct,

Plaintiff has suffered and continues to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial.

118. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover punitive damages in amounts to be proven at trial.

XIV.

TENTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

(By PLAINTIFF against All Defendants)

119. Plaintiff incorporates by reference herein all allegations set forth

1 above, and by this reference incorporates the same herein and makes each a part
2 hereof as though fully set forth.

3 120. Plaintiff was forced to witness the death of her son because the
4 killing was seen and recorded by multiple witnesses, and afterwards was featured
5 prominently on national and international news. Video footage broadcast by
6 KECY-TV FOX 9 and ABC 5 depicts Decedent, who is clearly unarmed, being
7 attacked by a K-9 dog, beaten, forced onto the ground, and shot with one or more
8 tasers amidst a swarm of police officers. Sadly, Plaintiff, who had a very close
9 relationship with her son, witnessed the fatal attack of her son on television, and
10 had to contend with his death on Mother's Day,

11 121. All Defendants, and each of them, knew or reasonably should have
12 known that the conduct described herein would and did proximately result in
13 physical and emotional distress to Plaintiff.

14 122. At all relevant times, all Defendants, and each of them, had the power,
15 ability, authority, and duty to stop engaging in the conduct described herein and/or
16 to intervene to prevent or prohibit said conduct. Defendants, and each of them,
17 engaged in outrageous conduct towards the Deceased, with the intention to cause
18 or with reckless disregard for the probability of causing Plaintiff to suffer severe
19 emotional distress. To the extent that said outrageous conduct was perpetrated by
20 certain Defendants, the remaining Defendants adopted and ratified said conduct
21 with a wanton and reckless disregard of the deleterious consequences to Plaintiff.
22 As a proximate result of said conduct, Plaintiff has suffered and continues to
23 suffer extreme mental distress, humiliation, anguish, and emotional and physical
24 injuries, as well as economic losses, all to her damage in amounts to be proven at
25 trial.

26 123. Defendants committed the acts alleged herein maliciously,
27 fraudulently and oppressively with the wrongful intention of injuring Plaintiff,
28 from an improper and evil motive amounting to malice and in conscious disregard

1 of Plaintiff's rights, entitling Plaintiff to recover punitive damages in amounts to
2 be proven at trial.

3 **XV.**

4 **THIRTEENTH CAUSE OF ACTION**

5 **DAMAGES**

6 **(By Plaintiff against all Defendants)**

7 1. Plaintiff incorporates by reference herein all allegations set forth
8 above, and by this reference incorporate the same herein and makes each a part
9 hereof as though fully set forth.

10 2. Plaintiff brings this claim individually and as the personal
11 representative of Decedent, and seeks both survival and wrongful death damages
12 for the violation of Decedent's rights.

13 3. As a direct and proximate result of each Defendants' acts and/or
14 omissions as set forth above, Plaintiff has been deprived of the life-long love,
15 companionship, comfort, support, society, care and sustenance of Decedent, and
16 will continue to be so deprived for the remainder of her natural life.

17 4. As a further proximate result of the above described acts and
18 omissions of Defendants, and each of them, Plaintiff has been deprived of the
19 financial support of Decedent. Plaintiff was financially dependent upon Decedent
20 for the necessities of life and will continue to incur the lifelong loss of Decedent's
21 financial support in the future and for the remainder of her natural life, in an
22 amount according to proof, and all to their financial detriment.

23 5. In addition, Plaintiff sustained the following injuries and damages,
24 past and future, including:

- 25 a. Wrongful death of Tommy Yancy Junior;
- 26 b. Conscious extreme pain, suffering, fear of impending death, cruelty,
- 27 humiliation, degradation, misery, and loss of personal safety;
- 28 c. Hospital, paramedics, and other medical expenses;

1 d. Coroner's fees, funeral and burial expenses;
 2 e. Loss of familial relationships, including loss of love, companionship,
 3 comfort, affection, society, services, solace, and moral support;
 4 f. Loss of financial support and necessities of life;
 5 g. Violation of constitutional rights;
 6 h. All damages, attorneys' fees, and penalties recoverable under 42
 7 U.S.C. 15 §§ 1983 and 1988, and as otherwise allowed under California
 8 and United States statutes, codes, and common law;
 9 153. Tommy Yancy Junior's loss of life, pursuant to federal civil rights law; and
 10 Tommy Yancy Junior's conscious pain and suffering, pursuant to federal civil
 11 rights law and state law.

12 **XVI.**

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests entry of judgment in her favor and against
 15 all Defendants as follows:

- 16 1. For compensatory damages in the amount of \$20,000,000, or in
 17 whatever other amount may be proven at trial, including both survival
 18 damages and wrongful death damages under federal and state laws;
- 19 2. For funeral and burial expenses, and loss of financial support;
- 20 3. For general damages according to proof at the time of trial;
- 21 4. For medical and related expenses according to proof at the time of trial;
- 22 5. For punitive damages against the individual defendants in an amount to
 23 be proven at trial;
- 24 6. For interest;

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7. For reasonable costs of this suit and attorneys' fees; and
8. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: September 29, 2015

s/ MAXWELL C. AGHA

Attorney for Plaintiffs

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